

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT H. WOLLENBERG  
and THOMAS J. BALK

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Appeal 2007-0510  
Application 10/699,507  
Technology Center 1797

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Mailed: June 19, 2008

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Before DALE M. SHAW *Chief Appeals Administrator*  
SHAW, *Chief Appeals Administrator*.

ORDER REMANDING APPEAL TO EXAMINER

On December 9, 2006 the Board of Patent Appeals and Interferences  
(Board) mailed a Docketing Notice to Appellants. The Docketing Notice set  
forth the Appeal Number (2007-0510), as well as all pertinent Appeal

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papers. On September 20, 2007, the Board rendered a Decision affirming in part the Examiner's rejections. On November 19, 2007, the Appellants filed Request for Rehearing. On March 19, 2008, the Board granted the Request for Rehearing, by denominating the Decision of September 20, 2007 as new grounds of rejection. On May 19, 2008, Appellants filed a second Request for Rehearing and an Amendment.

37 CFR 41.50(b) states:

(b) Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. Should the examiner reject

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the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Since Appellants have filed an amendment, it is apparent that Appellants have opted to utilize 37 CFR §41.50(b)(1). Accordingly the application will be remanded to the examiner.

#### CONCLUSION

Accordingly, it is

**ORDERED** that the application is remanded to the examiner for further Prosecution.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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